

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 647

**Introduced by Committee on Judiciary (Senators Evans (Chair),
Blakeslee, Corbett, Harman, and Leno)**

February 18, 2011

An act to amend Sections 116.780 and 116.820, 116.820, 700.160, 2029.610, and 2029.620 of the Code of Civil Procedure, to amend Section 7100 of the Health and Safety Code, and to amend Sections 259, 2583, and 8250 of the Probate Code, relating to civil law.

LEGISLATIVE COUNSEL'S DIGEST

SB 647, as amended, Committee on Judiciary. Civil law: omnibus bill.

~~Existing~~

(1) *Existing* law, the Small Claims Act, governs the procedures in small claims court. The act provides that the judgment of the superior court of a small claims appeal is final, and specifies the procedures for the enforcement of judgments.

Existing law provides that a deposit account or safe-deposit account standing in the name of a person other than a judgment debtor is not subject to levy unless authorized by the court.

This bill would make technical changes to those provisions ~~by deleting~~ and would delete erroneous cross-references.

(2) *Existing law establishes a process for obtaining a subpoena in connection with an out-of-state proceeding.*

This bill would require additional information to be included in specified documents filed pursuant to those provisions.

(3) *Under existing law, if a decedent has not otherwise given directions, the right to control the disposition of the remains of the deceased person vests in a specified order of a list of persons.*

This bill would include in that list a conservator of the person or estate appointed in accordance with specified provisions when the decedent has sufficient assets.

(4) *Existing law imposes restrictions upon a person's or beneficiary's entitlement to the estate of a decedent who was an elder or dependent adult, if the person or beneficiary has committed certain acts against the decedent, including, but not limited to, physical abuse, neglect, or financial abuse.*

This bill would make technical, nonsubstantive changes to those provisions.

(5) *Existing law establishes the procedure for the issuance and service of a summons, and authorizes a plaintiff to have a clerk issue one or more summons for any defendant.*

This bill would provide that the provisions that authorize a clerk to issue a summons are applicable when a person files an objection to the probate of a will.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 116.780 of the Code of Civil Procedure
2 is amended to read:
3 116.780. (a) The judgment of the superior court after a hearing
4 on appeal is final and not appealable.
5 (b) Article 6 (commencing with Section 116.610) on judgments
6 of the small claims court applies to judgments of the superior court
7 after a hearing on appeal, except as provided in subdivision (c).
8 (c) For good cause and where necessary to achieve substantial
9 justice between the parties, the superior court may award a party
10 to an appeal reimbursement of (1) attorney's fees actually and
11 reasonably incurred in connection with the appeal, not exceeding
12 one hundred fifty dollars (\$150), and (2) actual loss of earnings
13 and expenses of transportation and lodging actually and reasonably
14 incurred in connection with the appeal, not exceeding one hundred
15 fifty dollars (\$150).

SEC. 2. Section 116.820 of the Code of Civil Procedure is amended to read:

116.820. (a) The judgment of a small claims court, or the judgment of the superior court after a hearing on appeal, may be enforced *by the small claims court* as provided in Title 9 (commencing with Section 680.010) of Part 2 and in Sections 674 and 1174 on the enforcement of judgments of other courts.

(b) The clerk of the court shall charge and collect all fees associated with the enforcement of judgments under Title 9 (commencing with Section 680.010) of Part 2. The clerk shall immediately deposit all the fees collected under this section into a bank account established for this purpose by the Administrative Office of the Courts. The money shall be remitted to the State Treasury under rules adopted by, or trial court financial policies and procedures authorized by, the Judicial Council under subdivision (a) of Section 77206 of the Government Code. The Controller shall distribute the fees to the Trial Court Trust Fund as provided in Section 68085.1 of the Government Code.

(c) The prevailing party in any action subject to this chapter is entitled to the costs of enforcing the judgment and accrued interest.

SEC. 3. Section 700.160 of the Code of Civil Procedure is amended to read:

700.160. (a) Except as provided in subdivision (b), a deposit account or safe-deposit box standing in the name of a person other than the judgment debtor, either alone or together with other third persons, is not subject to levy under Section 700.140 or 700.150 unless the levy is authorized by court order. The levying officer shall serve a copy of the court order on the third person at the time the copy of the writ of execution and the notice of levy are served on the third person.

(b) A court order is not required as a prerequisite to levy on a deposit account or safe-deposit box standing in the name of any of the following:

(1) The judgment debtor, whether alone or together with third persons.

(2) The judgment debtor's spouse, whether alone or together with other third persons. An affidavit showing that the person in whose name the account stands is the judgment debtor's spouse shall be delivered to the financial institution at the time of levy.

(3) A fictitious business name if an unexpired fictitious business name statement filed pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code lists as the persons doing business under the fictitious business name either (A) the judgment debtor or (B) the judgment debtor's spouse or (C) the judgment debtor and the judgment debtor's spouse, but does not list any other person. A copy of a fictitious business name statement, certified as provided in Section 17926 of the Business and Professions Code, that satisfies these requirements shall be delivered to the financial institution at the time of levy, and if a person other than the ~~defendant~~ judgment debtor is listed in the statement, an affidavit showing that the other person is the judgment debtor's spouse shall also be delivered to the financial institution at the time of levy.

(4) The additional name of a judgment debtor listed on the writ of execution pursuant to an affidavit of identity as provided by Section 680.135, whether alone or together with third persons.

(c) In any case where a deposit account in the name of a person other than the judgment debtor, whether alone or together with the judgment debtor, is levied upon, the financial institution shall not pay to the levying officer the amount levied upon until being notified to do so by the levying officer. The levying officer may not require the financial institution to pay the amount levied upon until the expiration of 15 days after service of notice of levy on the third person.

SEC. 4. Section 2029.610 of the Code of Civil Procedure is amended to read:

2029.610. (a) On filing a petition under Section 2029.600, a petitioner who is a party to the out-of-state proceeding shall pay a first appearance fee as specified in Section 70611 of the Government Code. A petitioner who is not a party to the out-of-state proceeding shall pay the fee specified in subdivision (c) of Section 70626 of the Government Code.

(b) The court in which the petition is filed shall assign it a case number.

(c) On responding to a petition under Section 2029.600, a party to the out-of-state proceeding shall pay a first appearance fee as specified in Section 70612 of the Government Code. A person who is not a party to the out-of-state proceeding may file a response without paying a fee.

(d) Any petition, response, or other document filed under this section shall satisfy all of the following conditions:

(1) It shall bear the caption and case number of the out-of-state case to which it relates.

(2) The first page shall state the name of the court in which the document is filed.

(3) The first page shall state the case number assigned by the court under subdivision (b).

(4) The first page shall state whether or not the person filing the document is a party to the out-of-state case.

SEC. 5. Section 2029.620 of the Code of Civil Procedure is amended to read:

2029.620. (a) If a petition has been filed under Section 2029.600 and another dispute later arises relating to discovery being conducted in the same county for purposes of the same out-of-state proceeding, the deponent or other disputant may file a petition for appropriate relief in the same superior court as the previous petition.

(b) The first page of the petition shall clearly indicate that it is not the first petition filed in that court that relates to the out-of-state case.

(c) (1) If the petitioner in the new dispute is a party to the out-of-state case who previously paid a first appearance fee under this article, the petitioner shall pay a motion fee as specified in subdivision (a) of Section 70617 of the Government Code. If the petitioner in the new dispute is a party to the out-of-state case but has not previously paid a first appearance fee under this article, the petitioner shall pay a first appearance fee as specified in Section 70611 of the Government Code.

(2) If the petitioner in the new dispute is not a party to the out-of-state case, the petitioner shall pay the fee specified in subdivision (c) of Section 70626 of the Government Code, unless the petitioner previously paid that fee. If the petitioner previously paid the fee specified in subdivision (c) of Section 70626 of the Government Code, the petitioner shall pay a motion fee as specified in subdivision (a) of Section 70617 of the Government Code.

(d) If a person responding to the new petition is not a party to the out-of-state case, or is a party who previously paid a first appearance fee under this article, that person does not have to pay a fee for responding. If a person responding to the new petition is

1 a party to the out-of-state case but has not previously paid a first
2 appearance fee under this article, that person shall pay a first
3 appearance fee as specified in Section 70612 of the Government
4 Code.

5 (e) Any petition, response, or other document filed under this
6 section shall satisfy all of the following conditions:

7 (1) It shall bear the caption and case number of the out-of-state
8 case to which it relates.

9 (2) The first page shall state the name of the court in which the
10 document is filed.

11 (3) The first page shall state the same case number that the court
12 assigned to the first petition relating to the out-of-state case.

13 (4) *The first page shall state whether or not the person filing*
14 *the document is a party to the out-of-state case.*

15 (f) A petition for relief pursuant to this section shall be
16 accompanied by a civil case cover sheet.

17 *SEC. 6. Section 7100 of the Health and Safety Code is amended*
18 *to read:*

19 7100. (a) The right to control the disposition of the remains
20 of a deceased person, the location and conditions of interment, and
21 arrangements for funeral goods and services to be provided, unless
22 other directions have been given by the decedent pursuant to
23 Section 7100.1, vests in, and the duty of disposition and the liability
24 for the reasonable cost of disposition of the remains devolves upon,
25 the following in the order named:

26 (1) An agent under a power of attorney for health care who has
27 the right and duty of disposition under Division 4.7 (commencing
28 with Section 4600) of the Probate Code, except that the agent is
29 liable for the costs of disposition only in either of the following
30 cases:

31 (A) Where the agent makes a specific agreement to pay the costs
32 of disposition.

33 (B) Where, in the absence of a specific agreement, the agent
34 makes decisions concerning disposition that incur costs, in which
35 case the agent is liable only for the reasonable costs incurred as a
36 result of the agent's decisions, to the extent that the decedent's
37 estate or other appropriate fund is insufficient.

38 (2) The competent surviving spouse.

39 (3) The sole surviving competent adult child of the decedent,
40 or if there is more than one competent adult child of the decedent,

1 the majority of the surviving competent adult children. However,
2 less than the majority of the surviving competent adult children
3 shall be vested with the rights and duties of this section if they
4 have used reasonable efforts to notify all other surviving competent
5 adult children of their instructions and are not aware of any
6 opposition to those instructions by the majority of all surviving
7 competent adult children.

8 (4) The surviving competent parent or parents of the decedent.
9 If one of the surviving competent parents is absent, the remaining
10 competent parent shall be vested with the rights and duties of this
11 section after reasonable efforts have been unsuccessful in locating
12 the absent surviving competent parent.

13 (5) The sole surviving competent adult sibling of the decedent,
14 or if there is more than one surviving competent adult sibling of
15 the decedent, the majority of the surviving competent adult siblings.
16 However, less than the majority of the surviving competent adult
17 siblings shall be vested with the rights and duties of this section
18 if they have used reasonable efforts to notify all other surviving
19 competent adult siblings of their instructions and are not aware of
20 any opposition to those instructions by the majority of all surviving
21 competent adult siblings.

22 (6) The surviving competent adult person or persons respectively
23 in the next degrees of kinship, or if there is more than one surviving
24 competent adult person of the same degree of kinship, the majority
25 of those persons. Less than the majority of surviving competent
26 adult persons of the same degree of kinship shall be vested with
27 the rights and duties of this section if those persons have used
28 reasonable efforts to notify all other surviving competent adult
29 persons of the same degree of kinship of their instructions and are
30 not aware of any opposition to those instructions by the majority
31 of all surviving competent adult persons of the same degree of
32 kinship.

33 (7) *A conservator of the person appointed under Part 3*
34 *(commencing with Section 1800) of Division 4 of the Probate Code*
35 *when the decedent has sufficient assets.*

36 (8) *A conservator of the estate appointed under Part 3*
37 *(commencing with Section 1800) of Division 4 of the Probate Code*
38 *when the decedent has sufficient assets.*

39 (7)

(9) The public administrator when the deceased has sufficient assets.

(b) (1) If any person to whom the right of control has vested pursuant to subdivision (a) has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next of kin in accordance with subdivision (a).

(2) If the charges against the person are dropped, or if the person is acquitted of the charges, the right of control is returned to the person.

(3) Notwithstanding this subdivision, no person who has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death to whom the right of control has not been returned pursuant to paragraph (2) shall have any right to control disposition pursuant to subdivision (a) which shall be applied, to the extent the funeral director or cemetery authority know about the charges, as if that person did not exist.

(c) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains, and to proceed under this chapter to recover usual and customary charges for the disposition, when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to ~~(6)~~ (8), inclusive, of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to ~~(6)~~ (8), inclusive, of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

(d) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kinship and upon the estate of the decedent. However, if a person accepts the gift of an entire body under subdivision (a) of Section 7155.5, that person, subject to the terms

1 of the gift, shall be liable for the reasonable cost of final disposition
2 of the decedent.

3 (e) This section shall be administered and construed to the end
4 that the expressed instructions of the decedent or the person entitled
5 to control the disposition shall be faithfully and promptly
6 performed.

7 (f) A funeral director or cemetery authority shall not be liable
8 to any person or persons for carrying out the instructions of the
9 decedent or the person entitled to control the disposition.

10 (g) For purposes of this section, “adult” means an individual
11 who has attained 18 years of age, “child” means a natural or
12 adopted child of the decedent, and “competent” means an
13 individual who has not been declared incompetent by a court of
14 law or who has been declared competent by a court of law
15 following a declaration of incompetence.

16 *SEC. 7. Section 259 of the Probate Code is amended to read:*

17 259. (a) Any person shall be deemed to have predeceased a
18 decedent to the extent provided in subdivision (c) where all of the
19 following apply:

20 (1) It has been proven by clear and convincing evidence that
21 the person is liable for physical abuse, neglect, or ~~fiduciary~~
22 *financial* abuse of the decedent, who was an elder or dependent
23 adult.

24 (2) The person is found to have acted in bad faith.

25 (3) The person has been found to have been reckless, oppressive,
26 fraudulent, or malicious in the commission of any of these acts
27 upon the decedent.

28 (4) The decedent, at the time those acts occurred and thereafter
29 until the time of his or her death, has been found to have been
30 substantially unable to manage his or her financial resources or to
31 resist fraud or undue influence.

32 (b) Any person shall be deemed to have predeceased a decedent
33 to the extent provided in subdivision (c) if that person has been
34 convicted of a violation of Section 236 of the Penal Code or any
35 offense described in Section 368 of the Penal Code.

36 (c) Any person found liable under subdivision (a) or convicted
37 under subdivision (b) shall not (1) receive any property, damages,
38 or costs that are awarded to the decedent’s estate in an action
39 described in subdivision (a) or (b), whether that person’s
40 entitlement is under a will, a trust, or the laws of intestacy; or (2)

1 serve as a fiduciary as defined in Section 39, if the instrument
2 nominating or appointing that person was executed during the
3 period when the decedent was substantially unable to manage his
4 or her financial resources or resist fraud or undue influence. This
5 section shall not apply to a decedent who, at any time following
6 the act or acts described in paragraph (1) of subdivision (a), or the
7 act or acts described in subdivision (b), was substantially able to
8 manage his or her financial resources and to resist fraud or undue
9 influence within the meaning of subdivision (b) of Section 1801
10 of the Probate Code and subdivision (b) of Section 39 of the Civil
11 Code.

12 (d) For purposes of this section, the following definitions shall
13 apply:

14 (1) Physical abuse as defined in Section 15610.63 of the Welfare
15 and Institutions Code.

16 (2) Neglect as defined in Section 15610.57 of the Welfare and
17 Institutions Code.

18 (3) False imprisonment as defined in Section 368 of the Penal
19 Code.

20 (4) ~~Fiduciary~~ *Financial* abuse as defined in Section 15610.30
21 of the Welfare and Institutions Code.

22 (e) Nothing in this section shall be construed to prohibit the
23 severance and transfer of an action or proceeding to a separate
24 civil action pursuant to Section 801.

25 *SEC. 8. Section 2583 of the Probate Code is amended to read:*

26 2583. In determining whether to authorize or require a proposed
27 action under this article, the court shall take into consideration all
28 the relevant circumstances, which may include, but are not limited
29 to, the following:

30 (a) Whether the conservatee has legal capacity for the proposed
31 transaction and, if not, the probability of the conservatee's recovery
32 of legal capacity.

33 (b) The past donative declarations, practices, and conduct of
34 the conservatee.

35 (c) The traits of the conservatee.

36 (d) The relationship and intimacy of the prospective donees
37 with the conservatee, their standards of living, and the extent to
38 which they would be natural objects of the conservatee's bounty
39 by any objective test based on such relationship, intimacy, and
40 standards of living.

1 (e) The wishes of the conservatee.

2 (f) Any known estate plan of the conservatee (including, but
3 not limited to, the conservatee's will, any trust of which the
4 conservatee is the settlor or beneficiary, any power of appointment
5 created by or exercisable by the conservatee, and any contract,
6 transfer, or joint ownership arrangement with provisions for
7 payment or transfer of benefits or interests at the conservatee's
8 death to another or others which the conservatee may have
9 originated).

10 (g) The manner in which the estate would devolve upon the
11 conservatee's death, giving consideration to the age and the mental
12 and physical condition of the conservatee, the prospective devisees
13 or heirs of the conservatee, and the prospective donees.

14 (h) The value, liquidity, and productiveness of the estate.

15 (i) The minimization of current or prospective income, estate,
16 inheritance, or other taxes or expenses of administration.

17 (j) Changes of tax laws and other laws which would likely have
18 motivated the conservatee to alter the conservatee's estate plan.

19 (k) The likelihood from all the circumstances that the
20 conservatee as a reasonably prudent person would take the
21 proposed action if the conservatee had the capacity to do so.

22 (l) Whether any beneficiary is the spouse or domestic partner
23 of the conservatee.

24 (m) Whether a beneficiary has committed physical abuse,
25 neglect, false imprisonment, or ~~fiduciary~~ *financial* abuse against
26 the conservatee after the conservatee was substantially unable to
27 manage his or her financial resources, or resist fraud or undue
28 influence, and the conservatee's disability persisted throughout
29 the time of the hearing on the proposed substituted judgment.

30 *SEC. 9. Section 8250 of the Probate Code is amended to read:*

31 8250. (a) When a will is contested under Section 8004, the
32 contestant shall file with the court an objection to probate of the
33 will. Thereafter, a summons shall be issued and served, with a
34 copy of the objection, on the persons required by Section 8110 to
35 be served with notice of hearing of a petition for administration
36 of the decedent's estate. The summons shall be issued and served
37 as provided in *Chapter 3 (commencing with Section 412.10) and*
38 *Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2*
39 *of the Code of Civil Procedure.* The summons shall contain a
40 direction that the persons summoned file with the court a written

- 1 pleading in response to the contest within 30 days after service of
- 2 the summons.
- 3 (b) A person named as executor in the will is under no duty to
- 4 defend a contest until the person is appointed personal
- 5 representative.